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SUPREME COURT, U.S.

NO. 80-5272

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1980

ORIGINAL COPY

WILLIAM H. BROWN,
Appellant,

vs.

GOODYEAR TIRE & RUBBER COMPANY,
TRAVELERS INSURANCE COMPANY, and
WORKMEN'S COMPENSATION FUND,
Appellees.

On Appeal From The Supreme Court of the State of Kansas

MOTION TO DISMISS APPEAL OR, in the Alternative, TO AFFIRM JUDGMENT

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TABLE OF CONTENTS

Page

Table of Authorities.....1

Motion.....2

Jurisdiction.....2

Question Presented.....2

Statute Involved.....2

Statement (of the Case).....2, 3

Argument.....3, 4, 5, 6, 7, and 8

TABLE OF AUTHORITIES

	Page
K. S. A. 1974 Supp. 44-510f(c).....	2, 3
Baker v. List and Clark Construction Co., 222 Kan. 127, 563 P.2d 431.....	7, 8
Brown v. Goodyear Tire & Rubber Co., 3 Kan.App.2d 648, 599 P.2d 1031 aff'd 227 Kan. 645, ____ P.2d ____ ..	5, 8
Brown v. Saginaw Metal Cast Plants, C.M.Div., 68 Mich. App. 85, 241 N.W.2d 769.....	6
Henry v. Bauder, 213 Kan. 751, [illegible] P.2d 362.....	6
Marshall v. Andrew F. Mahony Co., 56 F.2d 74 (9th Cir.)	6
Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 49 L.Ed2d 520, 96 S.Ct. 2562.....	6
Morales v. Minter, 393 F.Supp. 88 (D.Mass 1975).....	7
Pinkerton v. Schwiethale, 208 Kan. 596, 493 P.2d 200...	6
Richardson v. Belcher, 404 U.S. 78, 30 L.Ed 2d 231, 92 S.Ct. 254.....	4, 5
Wengler v. Druggists Mutual Ins. Co., ____ U.S. ____, 64 L.Ed.2d 107, 100 S.Ct. 1540.....	6

MOTION TO DISMISS APPEAL
Or, in the Alternative,
TO AFFIRM JUDGMENT

Pursuant to Rule 16, of the Rules of the Supreme Court of the United States, appellee Workmen's Compensation Fund moves that this appeal be dismissed or, alternatively, that the judgment of the Supreme Court of the State of Kansas be affirmed.

JURISDICTION

This is an appeal from a judgment of the Supreme Court of the State of Kansas. The judgment of that court was entered on April 15, 1980 and a petition for rehearing was denied on May 19, 1980. The notice of appeal was filed on August 6, 1980. Jurisdiction of this court was invoked under 28 U.S.C. §1257(2).

QUESTION PRESENTED

Did the Supreme Court of the State of Kansas err as a matter of law in holding that the provisions of K.S.A. 1974 Supp. 44-510f(c), now repealed, were constitutional while in effect and did not discriminate against appellant on the basis of age, nor violate his rights under the Fourteenth Amendment?

STATUTE INVOLVED

The statute involved is Kansas Statutes Annotated (K.S.A.) 1974 Supplement 44-510f(c), which provides:

> An employee shall not be entitled to compensation benefits for permanent total disability, temporary total disability or partial disability, under the workmen's compensation act, from and after the date when he shall be entitled to and during such period as he shall receive federal old age social security benefits, reduced or unreduced.

STATEMENT

The appellant suffered work-related personal injuries by accident on

November 1, 1974 and April 7, 1975. On April 12, 1976, appellant was awarded temporary total compensation benefits as well as medical expenses. Appellant, on September 5, 1977, became 65 years of age and since that date has received federal old age social security benefits.

Appellee Workmen's Compensation Fund, on October 11, 1977, filed a motion with the Division of Worker's Compensation of the state of Kansas for an order terminating appellant's disability benefits pursuant to K.S.A. 1974 Supp. 44-510f(c). The motion was sustained and appellant's temporary total disability benefits were terminated as of September 5, 1977, for and during the period in which appellant receives federal old age Social Security benefits. The motion and suspension in no way affected appellant's entitlement to medical benefits.

Appellant exhausted his administrative remedies and then appealed to the District Court of Shawnee County, Kansas, the Court of Appeals of the State of Kansas and the Supreme Court of the State of Kansas. At each level, the order terminating appellant's benefits was sustained.

ARGUMENT

This appeal does not present a substantial federal question. It does not involve the interpretation or application of a federal statute. There is no evidence that the question has or can arise in regard to workmen's compensation plans in other states. The judgment, furthermore, rests on an adequate non-federal basis. The judgment rests wholly upon a statute enacted by the legislature of the State of Kansas which, with other statutes of that state, constitutes the workmen's compensation plan of that state. Workmen's compensation payments have long been held to be a matter to be determined by state law.

Appellant, in his jurisdictional statement (page 8), alleges that the facts of this case constitute a violation of the due process and equal protection clauses of

the United States Constitution "because it is an undue discrimination which does not further the legislative intent." Appellant's allegation, however, ignores and is contrary to the decision of this Court in Richardson v. Belcher, 404 U.S. 78, 30 L.Ed.2d 231, 92 S.Ct. 254.

Belcher, the appellee in that case, was granted social security disability benefits in October, 1968. The benefits amounted to $329.70 monthly. Belcher later began receiving workmen's compensation benefits in the amount of $203.60 monthly from the State of West Virginia. His social security disability benefits were then reduced to $225.30 monthly, pursuant to an "offset" provision of the Social Security Act, 79 Stat. 406, 42 U.S.C. §424a. That statute provided that if any person received total or partial disability benefits under a workmen's compensation law or plan, then his Social Security benefits would be reduced by the amount that the total of both exceeded 80 percentum of his average current earnings.

Belcher, in his appeal to this Court, alleged that the reduction deprived him of due process of law guaranteed by the Fifth Amendment. The appellant in the instant case alleges a similar deprivation of due process. Both cases involve provisions which coordinate the interaction of social security benefits and workmen's compensation benefits.

This Court in Richardson v. Belcher, supra, stated that the Equal Protection Clause of the Fourteenth Amendment does not prohibit statutory classifications in the area of social welfare if the classification is rationally based and free from invidious discrimination. This Court examined the legislative history of 42 U.S.C. §424a to discover Congress' intention in passing that statute. The legislative history revealed that Congress determined that social security disability benefits and workmen's compensation programs served a common purpose and that, if the two benefits overlapped, then the worker's incentive to return to work was

inhibited and state workmen's compensation benefit programs could be impeded and eroded.

This Court, in conclusion, stated that

> [i]f the goals sought are legitimate, and the classification adopted is rationally related to the achievement of those goals, then the action of Congress is not so arbitrary as to violate the Due Process Clause of the Fifth Amendment.

Richardson v. Belcher, 404 U.S. 78, 84, 30 L.Ed.2d 231, 236, 92 S.Ct. 254, 258.

The goal sought by the statute in Richardson v. Belcher, supra, is the avoidance of a duplication of benefits. K.S.A. 1974 Supp. 44-510f(c) also sought to avoid such a duplication. Brown v. Goodyear Tire & Rubber Co., 3 Kan. App. 2d. 648, 599 P.2d 1031, aff'd 227 Kan. 645, _____ P.2d _____. Worker's compensation benefits are designed to replace wages loss to a worker by result of a debilitating accident. Federal old age social security benefits are designed to replace wages loss to a worker by result of his retirement. The Kansas Legislature legitimately sought to prevent a duplication of the benefits by providing that worker's compensation disability benefits should terminate during the period federal old age security benefits are being received.

Appellant's jurisdictional statement seeks to justify reversal of the judgment in this case, in part, by alleging that his injuries occurred between the ages of 62 and 65 and that workers compensation benefits would end even if he received only one dollar of federal old age social security benefits. Both contentions are inaccurate. Appellants worker's compensation benefits terminated not because of his age, but because he began to receive social security retirement benefits. His worker's compensation benefits, furthermore, will be renewed if appellant discontinues receiving social security benefits for any reason.

The authority cited by appellant for his allegation that the challenged statute

violates his due process and equal protection guarantees is inapplicable. Henry v. Bauder, 213 Kan. 751, 581 P.2d 362, declared Kansas' guest statute unconstitutional. Pinkerton v. Schwiethale, 208 Kan. 596, 493 P.2d 200, dealt with a Kansas statute permitting the court to award attorney fees to successful litigants in cases involving an allegation of the negligent operation of a motor vehicle. Marshall v. Andrew F. Mahony Co., 56 F.2d 74 (9th Cir.) dealt with the manner of computing benefits due to the seasonal nature of the worker's employment. Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 49 L.Ed.2d 520, 96 S.Ct. 2562, dealt with a Massachusetts statute requiring uniformed state police officers to retire at age 50. Wengler v. Druggists Mutual Ins. Co., _____ U.S. _____, 64 L.Ed.2d 107, 100 S.Ct. 1540, dealt with sex discrimination. The Missouri workman's compensation plan in that case provided for automatic death benefits to a widow while a widower was required to demonstrate dependence on his wife's earnings or mental or physical incapacity.

Only two cases cited by appellant have any similarity to this appeal. However, they also are inapplicable.

In one case, a Michigan statute stated that when a recipient of workmen's compensation benefits reached age 65, then his benefits would be reduced 5 percentum annually up to no more than 50 percentum. If a worker was older than 65, however, and was injured, then the statute would not have required any reduction since he or she would not reach age 65 when receiving benefits. The Michigan Court of Appeals held that the application of the statute discriminated among workers based only on age. Brown v. Saginaw Metal Cast Plants, C.M.Div., 68 Mich.App. 85, 241 N.W.2d 769. The Michigan case differs from the statute challenged in this appeal. The statute challenged in this appeal terminates the person's disability benefits only when and during the time that a person receives duplicative benefits.

In the second case, a Massachusetts statute provided for general welfare assistance to all those who qualified for no other assistance funded in part or in whole by the federal government. It excluded, however, all Massachusetts residents under age 18 or over age 65, whether or not persons in those age groups actually received any other assistance. The statute, in other words, created a presumption in regard to the receipt of benefits by certain classes of persons. Morales v. Minter, 393 F. Supp.88 (D. Mass. 1975) It also precluded those classes from demonstrating the lack of other public assistance. This differs significantly from the statute challenged in this appeal. The Kansas statute created no presumption that certain age groups received benefits. Nor did the statute deny benefits to any one simply because he or she was under 18 or over 65. The statute simply created no classification based on age.

The Supreme Court of the State of Kansas carefully considered appellant's contentions and upheld the Court of Appeals decision. That decision held that the classification of recipients of workers compensation benefits as to those who do and those who do not receive old age social security benefits was a rational classification, consistent with the overall system of wage-loss compensation.

The decisions of the courts of the State of Kansas in this case are consistent with the decision in Baker v. List and Clark Construction Co., 222 Kan. 127, 563 P.2d 431. In that case, a Kansas statute provided that workmen's compensation benefits to a surviving spouse with minor children would be reduced by a specified formula if the dependents received benefits under the Social Security Act because of the worker's death. The Kansas Supreme Court stated that:

> When the system of wage-loss protection is viewed as a whole, avoiding duplication or overlapping of benefits appears to be a reasonable legislative objective. It may be said that the classification created by the statute has a rational basis, is not arbitrary, and affords like treatment to persons similarly situated.

Baker v. List and Clark Construction Co., 222 Kan. 127, 131, 563 P.2d 431, 435 and quoted with approval in Brown v. Goodyear Tire & Rubber Co., 3 Kan.App.2d 648, 599 P.2d 1031.

For the foregoing reasons, this appeal should be dismissed or the judgment of the Supreme Court of the State of Kansas should be affirmed.

Dated: September 16, 1980.

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CERTIFICATE OF SERVICE

I, John C. Peterson, a member of the Bar of the Supreme Court of the United States and counsel of record for the Workmen's Compensation Fund, appellee herein, being duly sworn, takes oath and states that on September 16, 1980, pursuant to Rule 28, Rules of the Supreme Court, I served one copy of the foregoing Motion to Dismiss Appeal Or, in the Alternative, to Affirm Judgment on each of the parties herein, as follows:

On George E. McCullough, McCullough, Wareheim & LaBunker, 1507 Topeka Avenue, P.O. Box 1453, Topeka, Kansas 66601, attorneys for appellant; and

On James E. Benfer, Benfer and Farrell, P.O. Box 2217, Topeka, Kansas 66601, attorneys for appellee Goodyear Tire & Rubber Co.;

by depositing such copies in the United States Post Office, Topeka, Kansas, first class postage prepaid, properly addressed to the above-named counsel of record.

All parties required to be served have been served.

Dated: September 16, 1980.

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Workmen's Compensation Fund

Subscribed and sworn to before me on the 16th day of September, 1980.

Connie L. Stilson
CONNIE L. STILSON, NOTARY PUBLIC

My appointment expires: November 24, 1983.